REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1544 (CTA Case No. 8693)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, *JJ.*
TEKTITE INSURANCE BROKERS, INC., Respondent.	Promulgated: JAN 17 2018 2:16 p.m.

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DECISION

Fabon-Victorino, J.:

The Petition at bench involves the Decision and the Resolution dated August 26, 2016 and October 13, 2016, respectively, both promulgated by the Court in Division which cancelled and set aside the assessment issued by petitioner against respondent for deficiency Income Tax (IT), Value Added Tax (VAT), Expanded Withholding Tax (EWT), and Compromise Penalty on ground of prescription under Section 203 of the National Internal Revenue Code (NIRC), as amended. The ruling emanated from the finding that the waiver executed by respondent was infirm, hence, it failed to extend petitioner's right to assess. Moreover, the due process requirement was not observed as the Final Assessment Notice (FAN) was prematurely issued thereby depriving respondent the opportunity to register protest against the Preliminary Assessment Notice (PAN).

An overview of the facts as established during trial of the case which remain undisputed are as follows:

Petitioner is the Commissioner of Internal Revenue, vested with the authority to assess and collect all national internal revenue taxes, fees, and charges. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Tektite Insurance Brokers, Inc. (Tektite) is a domestic corporation authorized to operate as an insurance broker by the Insurance Commission, with principal office at the 20th Floor, East Tower, Philippine Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City. It is a BIR-registered entity with Tax Identification (TIN) No. 000-188-338-000.

On April 15, 2009, respondent filed its Annual Income Tax Return (BIR Form No. 1702) for taxable year (TY) 2008 reporting revenue from its sale of services in the amount of ₱5,323,000.06.

Subsequently, Letter of Authority (LOA) No. 2009-00015036 dated April 5, 2010 was issued by petitioner to respondent authorizing the audit and examination of its books of account and other accounting records for TY 2008.

On November 11, 2011, respondent executed a Waiver of Statute of Limitations under the NIRC, as amended, which petitioner received and accepted extending the period to assess until September 30, 2012.

On September 26, 2012, respondent received from petitioner a Preliminary Assessment Notice (PAN) dated September 11, 2012 for deficiency IT, VAT, EWT, and Compromise Penalties for TY 2008 in the total amount of P2,238,928.49. Respondent contested the said assessment in a letter with attached supporting schedules dated September 28, 2012, filed on October 3, 2012.

On October 18, 2012, respondent received a Formal Letter of Demand (FLD) No. 043-A-B080-08 with Assessment Notices dated September 28, 2012 reiterating the assessment for deficiency IT, VAT, EWT, and compromise penalties in an increased amount of ₱2,271,476.65.

On November 16, 2012, respondent filed with the BIR a Protest dated November 5, 2012 against the FLD and submitted supporting documents thereto on January 14, 2013 through a Letter dated January 11, 2013.

On August 12, 2013, respondent elevated the matter to the Court in Division citing petitioner's inaction on its protest.

On August 26, 2016, the Court in Division granted respondent's Petition for Review in its Decision, the decretal portion of which reads as follows:

> WHEREFORE, premises considered, the instant Petition for Review is GRANTED. Accordingly, the assessments covering income tax, value added tax, expanded withholding tax, and compromise penalty in the total amount of ₱2,271,476.65, inclusive of interest, for taxable year 2008 are hereby CANCELLED and WITHDRAWN.
>
> SO ORDERED.

The ruling of the Court in Division was effectively affirmed in the Resolution dated October 13, 2016, which denied for lack of merit petitioner's plea for reconsideration of the assailed Decision.

Hence, this appeal through a Petition for Review before the Court *En Banc*.

Petitioner insists that contrary to the finding of the Court in Division, the subject assessment for alleged deficiency taxes was timely issued since respondent executed a waiver of the defense of prescription under Section 222(b) of the NIRC, as amended, which extended his three-year period to assess. The said Waiver is valid since all the essential requisites for its execution under existing rules and regulations have been substantially complied with. It was signed by an authorized representative of respondent and accepted and signed by an authorized Revenue District Officer. It was duly notarized, with the expiry date of the extended period to assess indicated therein. Hence, it was erroneous for the Court in Division to hold that the said Waiver is invalid.

Petitioner likewise finds error in the ruling that the date of his acceptance was not indicated in the Waiver suggesting that the date of acceptance was the date that the Waiver was notarized, i.e., November 11, 2011.

Further, the Waiver was also received by the BIR, through Revenue Officer (RO) Jamilah L. Dianalan, on August 20, 2012, as evidenced by her signature at the bottom portion of the Waiver. Such receipt by RO Dianalan is tantamount to his acceptance of the Waiver. Given that the acceptance of the Waiver on two occasions occurred before the expiration of the 3-year prescriptive period, the said Waiver was validly executed, and effectively extended his period to assess.

The ruling that the Waiver is invalid because it failed to specify the kinds and amounts of taxes due is likewise inaccurate as these conditions are not required under RMO No. 20-90 and RDAO No. 05-01. For petitioner, additional requisites cannot be imposed for the validity of a waiver.

Petitioner as well claims that respondent is estopped from impugning the validity of the subject Waiver since it voluntarily executed the same. By doing so, respondent is deemed to have waived any flaw or imperfection in the said Waiver consistent with Article 6 of the New Civil Code which provides that rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law. Besides, the invalidity of the Waiver was not an issue in respondent's protest.

Also fallacious is the ruling that the Waiver is invalid on account of failure to accord respondent due process. Allegedly, both the PAN and the FLD fully appraised respondent of the facts and the law upon which the assessment for deficiency taxes was based as mandated under Section 228 of the NIRC, as amended. Moreover, respondent, throughout the duration of the audit, was given the opportunity to present its case and substantiate its defense.

Petitioner also impugns the finding that the FLD was prematurely issued on September 28, 2012, or 17 days after the PAN was issued on September 11, 2012. In other words, the 15-day period to protest the PAN was sufficiently complied with. That the PAN was allegedly received by respondent on September 26, 2012, giving it 15 days or until October 11, 2012 to protest it is of no consequence as petitioner could not possibly ascertain respondent's receipt thereof. More importantly, he enjoys the presumption of regularity in the performance of official duty. In any event, the alleged premature issuance of the FLD on September 28, 2012 did not prejudice respondent for it was able to seasonably file a protest against the PAN on October 3, 2012.

On the other hand, respondent assails the jurisdiction of the Court *En Banc* saying that it no longer has jurisdiction to entertain the instant appeal as the assailed Decision of August 26, 2016 was rendered final and executory due to petitioner's failure to include a notice of hearing in his motion for reconsideration of the assailed Decision of August 26, 2016. By reason of such omission the motion is deemed a mere scrap of paper and considered not filed.

Even assuming that the Court *En Banc* can take cognizance of this appeal, respondent believes that it should still be denied due to prescription as ruled by the Court in Division.

Respondent claims that the Waiver of the Statute of Limitations was invalidly executed not only because the kind and the amount of tax deficiencies were not indicated therein, but it also lacked the date of acceptance by petitioner. Respondent believes that the date of notarization of the Waiver is not the date of petitioner's acceptance but the date when respondent affixed its signature.

Moreover, proof of authority to sign for and in behalf of respondent given by its Board of Directors is as well wanting.

In addition, for the first three quarters of 2008 for VAT, and from January to October of 2008 for EWT, the Waiver was executed after the expiration of the 3-year prescriptive period.

Respondent also deems unmeritorious petitioner's contention that the requirements for the execution of the Waiver under RMO No. 20-90 and RDAO No. 05-01 merely pertain to form, and substantial compliance with such requirements is sufficient for its validity. Moreover, execution of a waiver is a derogation of the taxpayer's rights to security against prolonged tax investigations, thus it should be strictly construed. Per settled legal principle, the requisites for the execution of a valid waiver must be complied with to the letter.

Petitioner cannot also invoke estoppel against respondent for it is his responsibility to ensure that the waiver executed by the taxpayer is compliant with rules and regulations, particularly RMO No. 20-90 and RDAO No. 05-01, which he himself issued.

On account of the foregoing infirmities, the Waiver should be deemed invalidly executed, hence, did not extend petitioner's period to assess. Consequently, the FLD with Assessment Notices issued after the lapse of the 3-year prescriptive period must as well be deemed invalid.

Respondent further avers that the assessment in the FLD is in itself void for having been issued in violation of the taxpayer's right to due process. Pursuant to Sections 3.1.2

and 3.1.5 of BIR Revenue Regulations (RR) No. 12-99, implementing Section 228 of the NIRC, as amended, a taxpayer has 15 days from receipt of the PAN to file a protest and only thereafter that a final assessment can be issued. Allegedly, it received the PAN on September 26, 2012, thus, it had until October 11, 2012 to file a protest. Barely two (2) days from receipt of the PAN, or on September 28, 2012, and before the 15-day reglementary period to file protest lapsed, petitioner issued a final assessment via the FLD, depriving it of its right to be heard on the PAN rendering the FLD void.

More importantly, respondent is not liable to pay the assessed deficiency taxes. It is not liable for deficiency EWT on income payments for repairs and maintenance to regular suppliers of goods and services, and for professional fees as it is not one of the Top 20,000 private corporations. Under Section 2.57.2 of BIR RR No. 02-1998, only those in the Top 20,000 private corporations, as notified by the BIR, are liable to withhold income tax on payments from regular supplies of goods and services. There being no proof that respondent is in the Top 20,000 private corporations, and there being no proof that payments were made to regular suppliers, respondent cannot be made liable for the assessed EWT on repair and maintenance.

As to the payments for professional fees, suffice it to say that they were made mostly to general professional partnerships exempt from withholding pursuant to Section 26 of the NIRC, in relation to Section 2.57.5(B)(4) of RR No. 02-1998, while for those not exempt, withholding has already been done, as shown in respondent's EWT Returns.

Respondent also denies liability for deficiency income tax as it submitted withholding tax certificates (BIR Form No. 2307) to support the amount claimed as creditable tax withheld for TY 2008.

On alleged deficiency VAT on its receipts not subjected to VAT, the same is void for failure of petitioner to provide the basis or specifics of his finding that respondent is liable thereto rendering such assessment void pursuant to Section 228 of the NIRC, as amended.

Respondent also faults petitioner for alleged arbitrary disallowance of its claim for input VAT for TY 2008 for lack of substantiation. Allegedly, the invoices and official receipts fully support its claimed input VAT. Petitioner's ruling made *sans* the required examination of its books of accounts and financial records rendered the assessment on this item void.

Finally, respondent rejects petitioner's finding that it is liable for deficiency IT and VAT on undeclared income due from its affiliates. The erroneous conclusion was reached after petitioner compared respondent's and Meridian Assurance Corporation's (Meridian) Audited Financial Statements (AFS) for TY 2008 without verifying the records of both corporations. However, a simple review of its financial records and those of Meridian shows that the amounts "due" to Meridian are actually premiums due for remittance to Meridian and not commissions as theorized by petitioner. Respondent explains that the observed discrepancy in the AFS of the two corporations arose from a timing difference as Meridian recognized the entire amount due from respondent while respondent recognized the amount as they became due.

THE RULING OF THE COURT

Section 203 of the NIRC of 1997, as amended, provides that the period for petitioner to assess and collect an internal revenue tax is limited only to three years, the provision is explicit, to wit:

> SEC. 203. *Period of Limitation Upon Assessment and Collection*. – Except as provided in Section 222, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.
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> For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

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Thus, the CIR has three (3) years from the date of the actual filing of the return or from the last day prescribed by law for the filing of the return, whichever is later, to assess internal revenue taxes.[1]

For income tax purposes, Section 77(B)[2], in relation to Section 76 [3] of the NIRC, as amended, requires every corporation liable to tax to file a final adjustment return on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

In the case at bar, respondent filed its Annual Income Tax Return (BIR Form No. 1702) for TY 2008 on April 15, 2009, thus, petitioner had three (3) years or until April 15, 2012 to assess respondent for any deficiency income tax for TY 2008. Evidently, the FLD dated September 28, 2012 received by respondent on October 18, 2012 was issued beyond the 3-year prescriptive period.

As to VAT, Section 114(A)[4] of the NIRC, as amended, provides that Quarterly VAT Returns shall be filed within twenty-five (25) days following the close of each taxable quarter.

Respondent filed its Quarterly VAT Returns (BIR Form No. 2550Q) for the four (4) quarters of 2008 on April 23, 2008, July 23, 2008, October 20, 2008, and January 21,

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[1] Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc., G.R. No. 202695, February 29, 2016.

[2] SEC. 77. Place and Time of Filing and Payment of Quarterly Corporate Income Tax.
x x x x x x
(B) *Time of Filing the Income Tax Return.* - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.
x x x x x x

[3] SEC. 76. Final Adjustment Return. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year.
x x x x x x

[4] SEC. 114. Return and Payment of Value-Added Tax. -
(A) *In General.* - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis. [As implemented by Section 4.114-1(A) of RR No. 16-2005.

2009. For the fourth quarter, the last day prescribed by law to file VAT Return was on January 26, 2009 which shall be the reckoning point for the 3-year prescriptive period. Counting three (3) years from January 26, 2009, petitioner had until January 26, 2012, at the latest, to assess respondent for any deficiency. It is therefore beyond doubt that the assessment in the subject FLD received by respondent on October 18, 2012, was issued beyond the 3-year period to assess.

Respecting the EWT assessment, Section 58(A) of the NIRC, as amended, implemented by Sections 2.58(A)(2) and 2.81 of RR No. 02-1998, as amended by RR No. 06-2001, and RR No. 17-2003, in relation to RR No. 26-2002, provides that the filing of EWT returns of taxpayers engaged in insurance such as respondent shall be on a monthly basis and made within fifteen (15) days following the end of the month, except on December. The respondent filed its Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E) on February 8, 2008, March 7, 2008, April 4, 2008, May 9, 2008, June 6, 2008, July 9, 2008, August 11, 2008, September 4, 2008, October 9, 2008, November 7, 2008, December 8, 2008, and February 24, 2009, for the respective 12 months of TY 2008.

Counting three (3) years from February 24, 2009, petitioner had until February 24, 2012, at the latest to assess respondent for deficiency EWT. *Ergo*, the assessment in the FLD received by respondent on October 18, 2012, was issued beyond the 3-year prescriptive period.

Section 203 of the NIRC of 1997, as amended, limits the CIR's period to assess and collect internal revenue taxes to three (3) years counted from the last day prescribed by law for the filing of the return or from the day the return was filed, whichever comes later. Thus, assessments issued after the expiration of such period are no longer valid and effective.[5]

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[5] Commissioner of Internal Revenue vs. Systems Technology Institute, Inc., G.R. No. 220835, July 26, 2017.

This limitation on the right of the government to assess internal revenue taxes is primarily meant to safeguard the interests of taxpayers from unreasonable investigation by not indefinitely extending the period of assessment and depriving the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[6]

Petitioner however insists that the FLD was timely issued since the waiver executed by respondent extended his period to assess.

Unarguably, the 3-year rule to assess is subject to the exceptions as provided under Section 222(b) of the NIRC[7], to wit:

> x x x
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
> x x x x

In fine, the prescribed three-year period for petitioner to assess may be extended through the execution of a valid waiver wherein the taxpayer and petitioner agreed in writing that the period to issue an assessment and collect the taxes due is extended to a stipulated date. But for a waiver to be valid the following conditions provided under RMO No. 20-90, which implements Sections 203 and 222 (b) of the NIRC, as amended, must be satisfied:

1. The waiver must be in the form identified as Annex "A" hereof.

2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

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[6] Commissioner of Internal Revenue vs. Standard Chartered Bank, G.R. No. 192173, July 29, 2015.
[7] Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc., G.R. No. 213943, March 22, 2017.

Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. **The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription** or before the lapse of the period agreed upon in case a subsequent agreement is executed.

3. The following revenue officials are authorized to sign the waiver.

   A. In the National Office

   x x x x

   3. Commissioner For tax cases involving more than P1M

   B. In the Regional Offices

   3. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

   x x x x

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

5. **The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with.**[8] (Emphasis supplied)

Thus, to be valid as to extend the original 3-year period to assess, the waiver must be signed by the taxpayer, followed by the CIR or his authorized revenue officer indicating the acceptance of such waiver. The date of such acceptance must also be specifically indicated. These

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[8] Commissioner of Internal Revenue vs. FMF Development Corporation, G.R. No. 167765, June 30, 2008.

conditions are mandatory and must concur before the lapse of the 3-year prescriptive period to assess. Strict compliance with these mandatory requirements was made clear by the Final Arbiter when it even quoted the provision that "[a]ny revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with".

Again, in another case, the Supreme Court highlighted the foregoing requisites and their mandatory nature, as follows:

> Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
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> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after ______ 19 ___", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
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> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
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> 3. The waiver should be duly notarized.
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> **4.** The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. **The date of such acceptance by the BIR <u>should</u> be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.**

5. **Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription** or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement. [9] (Emphasis supplied)

In the instant case, the Waiver of the Statute of Limitations[10] was accepted in behalf of petitioner by RDO Florante R. Aninag. For unknown reason, the latter's date of acceptance was not indicated in the space provided for it rendering the Waiver invalid and with no force and effect.

Petitioner's theory that the date of notarization is deemed the date of his acceptance is certainly unmeritorious. As correctly stated by respondent, the Waiver is notarized after the taxpayer signs it but before it is forwarded to petitioner for acceptance. As laid down in the cited jurisprudence, the proper procedure in the execution of a valid Waiver is that "before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative."

Likewise bereft of merit is petitioner's claim that the date, August 20, 2012, appearing at the bottom portion of the original Waiver together with the signature of RO Jamilah L. Dianalan can also be deemed as the date of his acceptance of the Waiver.

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[9] Commissioner of Internal Revenue vs. Kudos Metal Corporation, G.R. No. 178087, May 05, 2010.

[10] Exhibit P-10, docket volume II p. 426; Exhibit R-11, docket volume VII p. 2380.

The Court however, cannot take hook, line, and sinker this contention. Per the Waiver itself, it was RDO Florante R. Aninag, and not RO Jamilah L. Dianalan, who accepted and agreed to the Waiver executed by respondent. And as earlier stated, the signature of RDO Florante R. Aninag signifying the acceptance of the Waiver by petitioner bears no date.

Significantly, RO Jamilah L. Dianalan herself admitted that it was not she but RDO Florante R. Aninag who accepted the Waiver for and in behalf of petitioner, thus:

> Q: Did you receive any response from the (respondent)?
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> A: No. But the taxpayer a (sic) duly executed a Waiver of Statute of Limitations which was received by Revenue District Officer Florante R. Aninag.[11]

Also noteworthy is the fact that RO Jamilah L. Dianalan was not among those authorized to sign and accept a waiver for and in behalf of petitioner pursuant to RMO No. 20-90.

And contrary to petitioner's claim, substantial compliance with the requisites for the execution of a waiver is not sufficient for strict compliance with its requisites is mandatory.

To repeat, the period to assess and collect deficiency taxes may be extended only upon a written agreement between the CIR and the taxpayer prior to the expiration of the three-year prescribed period in accordance with Section 222(b) of the NIRC. x x x the [Supreme] Court categorically stated that a Waiver must strictly conform to RMO No. 20-90. The mandatory nature of the requirements set forth in RMO No. 20-90, as ruled upon by this Court, was recognized by the BIR itself in the latter's subsequent issuances, namely,

[11] See Question number 19, Judicial Affidavit dated May 15, 2015 of Jamilah L. Dianalan, docket volume VII p. 2363.

Revenue Memorandum Circular (RMC) Nos. 6-2005 and 29-2012.[12]

In a relatively recent case, the Supreme Court reiterated the very same requisites for the execution of a valid waiver, and that compliance therewith is mandatory:

> To implement the foregoing provisions, the BIR issued RMO 20-90 and RDAO 05-01, outlining the procedures for the proper execution of a valid waiver, *viz.:*
>
> > 1. The waiver must be in the proper form prescribed by RMO 20- 90. The phrase "but not after __________ 19 _", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
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> > 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
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> > 3. The waiver should be duly notarized.
> >
> > 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
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> > 5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

[12] Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated, G.R. No. 187589, December 3, 2014.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.

These requirements are mandatory and must strictly be followed. To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.

x x x **the Court declared the waiver invalid because**: (1) it did not specify the date within which the BIR may assess and collect revenue taxes, such that the waiver became unlimited in time; (2) it was signed only by a revenue district officer, and not the CIR; (3) **there was no date of acceptance**; and (4) the taxpayer was not furnished a copy of the waiver.

x x x **the waiver was found defective and thus did not validly extend the original three-year prescriptive period because**: (1) it was not proven that the taxpayer was furnished a copy of the waiver; (2) it was signed only by a revenue district officer, and not the CIR as mandated by law; and (3) **it did not contain the date of acceptance by the CIR, which is necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period.**

In another case, **the waivers executed by the taxpayer's accountant were found defective for the following reasons:** (1) the waivers were executed without the notarized written authority of the taxpayer's representative to sign the waiver on its behalf; (2) **the waivers failed to indicate the date of acceptance**; and (3) the fact of receipt by the taxpayer of its file copy was not indicated in the original copies of the waivers.

x x x **the Court nullified the waivers because the following requisites were absent:** (1) conformity of either the CIR or a duly authorized representative; (2) **date of acceptance showing that both parties had agreed on the waiver before the expiration of the prescriptive period**; and (3) proof that the taxpayer was furnished a copy of the waiver.

> **The Court also invalidated the waivers executed by the taxpayer** in the case of x x x because: (1) they were signed by Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) **the date of acceptance was not shown**; (3) **they did not specify the kind and amount of the tax due**; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No.20-90.[13] (Emphasis supplied)

In the foregoing case, the Supreme Court also emphasized the need to indicate in the Waiver the kind and the amount of tax due pursuant to RMO No. 20-90 and RDAO No. 05-01. Precisely the Highest Court invalidated the Waiver executed in the cited case as it did not specify the kind and amount of the tax due.

As to petitioner's contention that respondent is estopped from impugning the validity of the Waiver it voluntarily executed thereby waiving any defect therein, and that neither prescription nor the validity of the waiver was put in issue in respondent's protest, suffice it to say that these are not new arguments which have been amply addressed by the Court in Division. Moreover, the Supreme Court itself has rejected these arguments when it ruled that the BIR cannot shift the blame to the taxpayer for issuing a defective waiver for it is its responsibility to observe full and strict compliance with the provisions of RMO 20-90 and RDAO 05-01 which it issued, thus:

> The CIR also argues that PDI is estopped from questioning the validity of the Waivers. We do not agree. As stated by the CTA, the BIR cannot shift the blame to the taxpayer for issuing defective waivers. The Court has ruled that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01 which were issued by the BIR itself. A waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.[14]

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[13] Commissioner of Internal Revenue vs. Systems Technology Institute, Inc., G.R. No. 220835, July 26, 2017.

[14] Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc., G.R. No. 213943, March 22, 2017.

To state anew, x x x the doctrine of estoppel cannot be applied as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. The BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself had issued. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot simply shift the blame to the taxpayer.[15]

All said, the Waiver executed in this case is invalid and of no force and effect. Consequently, it did not extend petitioner's 3-year prescriptive period to assess.

It has been ruled that a Waiver is not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension. A waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally.[16]

It has also been ruled that the law must not only be valid, it must also be just. Given that the waiver results to a derogation of some of the rights of the taxpayer, the same must be executed in accordance with pre-set guidelines and procedural requirements. Otherwise, it does not serve its purpose, and the taxpayer has all the right to invoke its nullity. x x x Without such a legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording

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[15] Commissioner of Internal Revenue vs. Systems Technology Institute, Inc., G.R. No. 220835, July 26, 2017.
[16] Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated, G.R. No. 187589, December 3, 2014.

protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law.[17]

Even assuming that all the formal requisites for the execution of a valid waiver have been satisfied, the subject assessment must still be declared void since there was violation of respondent's right to due process.

Section 228 of the NIRC, as amended, relevantly provides, thus:

> SEC. 228. Protesting of Assessment – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x
>
> x x x x x x x x x
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. **If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.**
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days **from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.** Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final. (Emphasis supplied)
>
> x x x x x x x x x

Implementing the foregoing provision is Revenue Regulations (RR) No. 12-99,[18] as amended by RR No. 18-2013,[19] Section 3 of which provides, as follows:

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –

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[17] Commissioner of Internal Revenue vs. Standard Chartered Bank, G.R. No. 192173, July 29, 2015.
[18] Dated September 6, 1999.
[19] Dated November 28, 2013.

> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 Preliminary Assessment Notice (PAN). – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based x x x.
>
> If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. (emphasis supplied)
>
> x x x x x x x x x

Evident from the above provisions that a taxpayer has fifteen (15) days from receipt of the PAN to register a protest to it or to file a response thereto with the BIR. It is only upon the lapse of the prescribed 15-day period, with or without a protest/response from the taxpayer, that the FLD or FAN may be issued.

The record shows that the PAN was issued on September 11, 2012 and received by respondent on September 26, 2012. Therefore, respondent had 15 days or until October 11, 2012 within which to protest or respond to the PAN. However, the FLD was issued on September 28, 2012, or barely two days from respondent's receipt of the PAN and before the lapse of the 15-day period for it to protest or respond to the PAN. Clearly, the FLD was prematurely issued depriving respondent of the opportunity to be heard on the PAN in violation of the due process requirement on assessment.

Petitioner argues that the date of issuance of the FLD on September 28, 2012 is inconsequential for the FLD was received by respondent on October 18, 2012, or after the 15-day period to protest/respond to the PAN.

Petitioner's argument is definitely specious and opposed to the purpose of the 15-day period accorded to a taxpayer to respond to the PAN. To be sure, the said 15-day period is given to a taxpayer, like respondent, to give it time to prepare and amply ventilate its defense for the consideration of the taxing authority. For after all, tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.[20]

It is therefore irrelevant that respondent was able to file a protest to the PAN for effectively, petitioner, upon issuance of the FLD, had already ignored or disregarded any argument or evidence of respondent against the assessment in the PAN. This clearly constitutes a denial of due process as respondent was not given a china man's chance to dispute and present evidence in its defense against the PAN.

Compliance with Section 228 of the NIRC is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.[21] The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.[22]

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[20] Commissioner of Internal Revenue vs. Fitness By Design, Inc., G.R. No. 215957, November 9, 2016.
[21] Id.
[22] Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 02, 2014.

With the FLD having been issued in violation of respondent's right to due process, the assessment contained therein is therefore void and must be set aside.

WHEREFORE, the Petition for Review dated November 16, 2016 filed by the Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice